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ILLINOIS COMMERCE COMMISSION

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Office of General Counsel

November 6, 1992

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MAIL BRANCH

VIA FEDERAL EXPRESS

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: Amendments of the Commission's
Rules to Establish New Personal
Communications Services, GEN Docket
No. 90-314 and ET Docket No. 92-100

Dear Ms. Searcy:

Enclosed please find the Comments of the Illinois Commerce Commission in the above-captioned docket. We have included an original plus eleven copies of the comments to fulfill the filing requirement in this docket and ensure that each Commissioner receives a copy.

We would appreciate your acknowledging receipt of this filing by returning a duplicate time-stamped copy of this letter in the enclosed self-addressed stamped envelope.

Thank you for your attention to this matter.

Very truly yours,

Darrell S. Townsley
Special Assistant Attorney General

DST/dst
Enclosures

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendments of the Commission's) GEN Docket No. 90-314
Rules to Establish New Personal) ET Docket No. 92-100
Communications Services)

TO: THE COMMISSION

COMMENTS OF THE
ILLINOIS COMMERCE COMMISSION

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November 6, 1992

COMMENTS OF THE
ILLINOIS COMMERCE COMMISSION
GEN Docket 90-314; ET Docket 92-100

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Executive Summary

The Illinois Commerce Commission commends the FCC for its efforts in facilitating the development of this new array of mobile services, commonly referred to as Personal Communication Services (PCS), which promise to bring greater choice to consumers of communications services.

There are two regulatory issues which the Illinois Commerce Commission specifically wishes to comment upon: the classification and interconnection issues relating to PCS. With regard to the first issue, the Illinois Commerce Commission feels that PCS is more appropriately classified as a common carrier service rather than a private land mobile radio service. We believe that the common carrier designation is the appropriate choice since PCS services will interface directly with the public switched telephone network.

In addition, several of the interconnection issues relating to the development of PCS are similar to issues with which the Illinois Commerce Commission has been dealing in its consideration of local exchange competition and interconnection. It is our belief that state regulatory bodies need to be flexible in the consideration of the means and manner in which

interconnection can be accomplished. This is why we have approved several tariffs which represent negotiated interconnection arrangements between existing local exchange companies and the new competitive access providers.

Finally the Illinois Commerce Commission has brief comments regarding the regulatory treatment of PCS. We believe that the FCC should exercise a "lighter" regulatory hand with PCS services in order to encourage competition and innovation in this market.

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Before the
Federal Communications Commission
Washington, D.C., 20554

MAIL BRANCH

In the Matter of)
)
Amendments of the Commission's)
Rules to Establish New Personal)
Communications Services)

GEN Docket No. 90-134
ET Docket No. 92-100

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NOV - 9 1992

Comments of the
Illinois Commerce Commission

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Illinois Commerce Commission (the "ICC") respectfully submits its comments to the Federal Communications Commission (FCC) in the above referenced matter. The ICC is the state regulatory body charged with the regulation of investor-owned telecommunications carriers in Illinois. The ICC is particularly interested in this proceeding at this time due to recent Illinois statutory changes and decisions regarding local exchange interconnection which will serve to enhance the competitive environment for the development of new communications services for Illinois consumers.

I. Introduction

The ICC commends the FCC in its undertaking of these important issues related to the development of personal

communications services. Since the divestiture of AT&T in January, 1984, the pace of change and development in the telecommunications industry has been unrelenting. Now, over eight years since the dismantling of AT&T, the number of products and service choices available to consumers in telecommunications is a testament to the benefits of an open, competitive market. The ICC continues to stress the dependance on market mechanisms rather than unnecessary regulatory oversight to help foster new development in the personal communications market--and we urge the FCC to adopt the same position.

II. Background

Some of the new legislative changes with regard to the scope of regulation afforded cellular services in Illinois can have a positive effect upon the development of PCS. These new activities, some legislative and some regulatory in nature, will serve to establish the tone of the ICC's comments in this PCS proceeding.

This past Spring, the Illinois General Assembly enacted a new Telecommunications Act which guides the ICC in its disposition of issues related to telecommunications. Briefly, the major legislative changes which impact directly upon the ICC's view of the development of PCS are as follows:

- o Regulatory oversight of cellular services has been further relaxed in Illinois from what had previously been in place. The statute exempts providers of cellular radio service in the State from active regulatory oversight where there are 2 or more certified providers of cellular service in a geographic area."¹

The statute also provides increased flexibility with regard to the certification of cellular providers. The ICC can approve a cellular radio application for a Certificate of Service Authority without hearing if a cellular applicant shows the Federal Communications Commission has issued to it a construction permit or an operating license to construct or operate a cellular radio system.²

- o The statute also states that a company providing both competitive and noncompetitive services must pass an imputation test for the noncompetitive elements of those competitive services.³ This portion of the statute is meant to safeguard any predatory pricing of local exchange competitive services or discriminatory pricing behavior on the part of those companies toward their competitors since they have control over "bottleneck facilities".
- o Along with the imputation standard set forth in the statute, there is also a provision establishing a standard for existing and new noncompetitive services which local exchange companies must meet. In its basic form, the law provides that a LEC providing existing noncompetitive services on an unbundled basis to one customer must provide that same service to all requestors. In the case of new noncompetitive services, if the unbundling requested is "economically and technically practicable"⁴ the LEC must provide the requested unbundling. The statute states further that services which are required to be unbundled at the federal level shall so be required at the state level.

¹ Ill. Rev. Stat., ch. 111 2/3, ¶ 13-203.

² Ill. Rev. Stat., ch. 111 2/3, ¶ 13-401.

³ Ill. Rev. Stat., ch. 111 2/3, ¶ 13-505.1.

⁴ Ill. Rev. Stat., ch. 111 2/3, ¶ 13-505.5.

In addition to the above items, the new Telecommunications statute provides the ICC with the ability to approve alternative forms of regulation which will help LECs to better compete in an increasingly competitive telecommunications environment.

The ICC has also taken action to allow interconnection of Competitive Access Providers (CAPs) to LEC central offices. Metropolitan Fiber Systems, Inc. (MFS), Teleport Communications Group (TCG), and TC Systems, Chicago are all CAPs operating in the Chicago area and have been granted the authority to provide various services. For instance, both MFS and TCG have applied for, and received approval, to provide private line service in several Illinois Bell and Central Telephone exchanges in the Chicago metropolitan area. In addition, the ICC has recently granted TC Systems the ability to provide resold Illinois Bell services within specified exchanges in the Chicago area.⁵

⁵ The specific Illinois Dockets in these actions are as follows: MFS application for certificate for private line service (Illinois Docket 90-0391, May 29, 1991), MFS application for the expansion of private line service into additional Illinois Bell exchanges (Illinois Docket 91-0557, June 24, 1992), Centel Facility Interconnect Service (CFIS) offered under the provisions of Central Telephone company of Illinois Tariffs Ill.C.C. No. 6 and Ill. C. C. No. 9 for intrastate local exchange and intrastate access services, respectively (this tariff was negotiated with MFS and was effective May 8, 1992), TCG application for private line service (Illinois Docket 89-0171, also referred to as the Optical Interconnection Service (OIS), September 22, 1989), TCG application for expansion of private line service (Illinois Docket 91-0597, April 29, 1992), expansion of the OIS tariff to all exchanges within Illinois Bell territory for which TCG has certification (Illinois Docket 90-0425, Third Interim Order, February 5, 1992) and TC Systems application for certificate and to permit resale of IBT services (Illinois Docket 91-0598, September 16, 1992).

III. Regulatory Issues Related to PCS

One of the two issues which the ICC would like to address in its comments is that of the regulatory status of PCS. The FCC requests comment in its NPRM and Tentative Decision on whether PCS should be classified as a common carrier or private land mobile radio service. According to FCC Part 90 Rules and Regulations, a private carrier is defined as, "an entity licensed in the private services and authorized to provide communications service to other private services on a commercial basis."⁶ The FCC also defines a land mobile radio service as "a mobile service between base stations and land mobile stations, or between land mobile stations."⁷

From these two definitions, it is clear that a private land mobile radio service is one which is used among private entities and utilizes radio technology in order to provide that service. Specific example of these types of services include public safety services such as police dispatch, or land transportation services such as taxicab dispatch as well as many other private network uses.

⁶ 47 C.F.R. § 90.7.

⁷ Ibid.

Given the nature of the types of services that are generally envisioned that PCS will provide, we believe that the classification of private land mobile radio service is inappropriate. In vendor presentations in Illinois, at the ICC's Telecommunications Policy Meetings,⁸ PCS was presented as a mobile service in a limited area that would interface with the public switched telephone network (PSTN). Small, hand-sized telephones, as well as compact computer terminals and two-way pagers, are some of the more commonly mentioned applications for PCS.

It is the ICC's position that if a PCS system is offered as a closed system for private use with a well-defined community of interest then the private land mobile radio service may be justified. However, if the PCS system requires interconnection to the PSTN, it is our belief that these services must be held to similar rules and requirements that govern all those who provide services in the public domain.

Therefore, the ICC concurs in comments made previously in this forum by the National Association of Regulatory Utility

⁸ The Illinois Commerce Commission's Telecommunications Policy Committee held an open meeting on August 24, 1992, where representatives from Ameritech and Jones Intercable made presentations regarding pilot PCS programs which have been approved by the FCC in the Chicago area.

Commissioners (NARUC) on two separate occasions.⁹ We view PCS as a complementary method of providing telecommunications services and similar regulations should apply.

A second regulatory issue which the ICC would like to comment upon is that of interconnection. We in Illinois have been dealing with interconnection issues at the local exchange level since 1989 when Teleport Communications Group first came before us requesting certification for private line service.¹⁰

The FCC acknowledges in its NPRM and Tentative Decision that various PCS providers may require different levels and means of interconnection. Depending upon the service quality demanded and the complexity of the service, requirements for interconnection can vary from provider to provider. The ICC strongly urges the FCC to adopt a policy that will not impose a higher, more costly standard of interconnection upon a provider than its service requires. For instance, if a PCS provider is selling voice-grade services the connections and service quality may be very different from a PCS provider selling high-speed data services. In the first case, voice connections may be able to withstand some error in the transmission of voice, however, in the second case, very high levels of error free transmission may be required

⁹ NARUC filed comments to the FCC regarding PCS in November 1990 and February 1992.

¹⁰ See note 5, supra.

to provide that service. The cost of interconnection for the latter service may be higher than the former, and we believe any interconnection standard should recognize those cost characteristics.

In Illinois, we have approved two different special access interconnection tariffs which reflect our belief that policy in this area needs to be flexible rather than prescribed. In the Illinois Bell Optical Interconnection Service (OIS), we have approved a virtual collocation arrangement for CAPs seeking central office interconnection. In the Centel Facility Interconnection Service (CFIS), we approved a physical collocation arrangement for CAPs seeking central office interconnection. These tariff decisions reflect a basic sentiment on the part of the ICC that competition in the local exchange should be encouraged in order to reduce consumer rates and that regulation should safeguard the manner in which this interconnection can take place, but should not prescribe only one means by which it is accomplished.

Thus, we urge you to adopt a policy which allows for flexible interconnection standards in order not only to provide for interconnection on a nondiscriminatory basis, but also to provide the flexibility needed in a market which is still very much in its developmental stages.

IV. Regulatory Treatment of PCS

The ICC would like to comment briefly on several other issues which were raised in the NPRM and Tentative Decision. These issues include: eligibility requirements, negotiation process, and licensing mechanisms.

A. Eligibility Requirements

The FCC raised concerns about incumbent cellular providers and LECs being in a position to exercise unfair advantage against new PCS providers and discussed the means by which this advantage can be either mitigated or controlled. Limiting the number of licenses that an incumbent provider could hold, or permitting these incumbents only to provide PCS services outside their home service area were two ways mentioned by the FCC.¹¹

Due to the economies of scope identified by the FCC in its NPRM and Tentative Decision,¹² the ICC believes that, rather

¹¹ FCC NPRM and Tentative Decision, CC Docket 90-314 and ET Docket 92-100, par. 81 and par. 67.

¹² FCC NPRM and Tentative Decision, CC Docket 90-314 and ET Docket 92-100, par. 65, states that, "While permitting cellular operators to acquire PCS licenses within their service areas could facilitate anticompetitive behavior, it also may lead to greater production efficiencies. There may be some economies of scope between PCS and cellular service to the extent that a single firm holding both a cellular and a PCS license would have lower units costs than would two firms separately holding each license."

than attempting to limit the participants, more attention should be devoted to developing a nondiscriminatory interconnection access policy which would promote entry into this market. With all participants facing the same costs for the same type of interconnection, it is the efficiency of that provider that will determine who will remain or leave that market.

This does not mean the FCC or state regulatory bodies should ignore activities of incumbent providers, but instead should maintain a watch for predatory pricing or discriminatory behaviors on the part of companies in this market. Claims of such behaviors can be dealt with as we deal with other types of claims--through our authority granted by our respective governments to adjudicate such problems.

B. Negotiations Process

The FCC has proposed it set up a specific negotiations process for spectrum use between incumbent service providers and new PCS providers. The ICC supports this means of "dispute settlement" among the parties. We would also caution, however, that this process should not be developed in such a way to provide a bureaucratic advantage to the incumbent provider. In a newly developing market such as PCS, time may be of extreme importance in terms of a fledgling business "breaking even". Therefore, it is important that any process which is established

be clear and the complaint process should not be so time consuming and burdensome as to allow an incumbent provider to "stonewall" a competitor seeking entry.

C. Licensing Mechanism

In its NPRM and Tentative Decision, the FCC has identified two of the existing options available for licensing new PCS applications. The first method is comparative hearings conducted by the FCC to determine who is "best fit" to provide service in a specific area. The second method is a lottery selection where all applicants are put into a pool and the "winner" is randomly selected from that pool. The first method has the advantage of applying a rationale to the choice of the licensee, but is also slow and costly to the FCC. The second method, although random, is less costly and takes less time. Competitive bidding, or "auction", is a third option identified by the FCC. Although this approach does apply some market principles to its approach--the price of the license is set by the bidders for that license--it is not currently a viable alternative.¹³

The ICC would advocate the use of auctions as a means to assign PCS licenses since it best applies market principles to the price-setting process. Since it is not yet an option available to the FCC, we would then favor the lottery approach

¹³ NPRM and Tentative Decision, at par. 82.

because it involves less administrative cost and is less time consuming.

In its NPRM and Tentative Decision, the FCC outlines two different lottery options, one which requires a review of qualifications prior to entering the lottery, and the second which requires a review of the "winner" prior to awarding the license.¹⁴ We believe it is imperative that the FCC review the qualifications of the winners. This review will help prevent the speculation we believe the FCC is attempting to address such as that which occurred with the cellular license lottery, where entrepreneurial individuals "won" cellular licenses and then sold them at much higher prices to other companies.

Although both lottery options are less time consuming than the comparative hearing, the "postcard lottery" does not restrict market entry in any way and is the least costly method of administering the licensing mechanism. The ICC believes this may be a reasonable compromise between the comparative hearing and the auction options. With a developing market such as PCS, the timing of market entry can be a very important factor in the success or failure of a venture.

¹⁴ NPRM and Tentative Decision, at par. 85.

V. Conclusions

Once again, the ICC highly commends the FCC for its efforts to deal with the highly complex and controversial issues raised by PCS. It is our belief that your efforts will be rewarded as this market makes additional services available to consumers which were not in existence prior to the FCC action.

In summary, the ICC would like to advocate that PCS be treated as a common carrier service since the more commonly known PCS services require interface with the PSTN. In order to provide the amount of regulatory oversight required to a service commonly viewed by state commissions as a complementary method of service as that provided by LECs, classification as a common carrier service is essential.

The ICC would also encourage the FCC to establish fair but flexible interconnection standards for these services. Service providers should only be required to pay for the level of interconnection they require. Prescribing higher standards of interconnection, as well as a higher cost for that interconnection, could result in PCS services costing consumers more, not less, than if flexible standards with concomitant prices were established.

Finally, the ICC believes that the FCC should exercise a "lighter" regulatory hand with PCS services in order to encourage competition and innovation in this market.

WHEREFORE, the Illinois Commerce Commission respectfully requests the Federal Communications Commission to adopt rules and policies regarding Personal Communications Services which are consistent with the foregoing comments.

Respectfully submitted,

Illinois Commerce Commission

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